

January 3, 2019

VIA ECF

Honorable James L. Cott
United States Magistrate Judge
Southern District of New York
500 Pearl Street, Room 21-D
New York, NY 10007

Re: Otto v. Hearst Communications, Inc., 1:17-cv-04712 (GHW-JLC)

Dear Judge Cott:

We represent Plaintiff Jonathan Otto in the above-captioned case. We write to respectfully inquire as to the status of Plaintiff's pending motion for judgment of civil contempt against Defendant Hearst Communications, Inc. ("Hearst") for its willful violation of paragraph 1 of Your Honor's Standing Order for All Cases Referred to Settlement. [Dkt. #66]

By way of background, on December 10, 2018, the Honorable Judge Woods granted summary judgment in Plaintiff's favor, finding Hearst liable for copyright infringement in violation of 17 U.S.C. § 501. [Dkt. # 85] Specifically, the Court determined that "[i]t would be antithetical to the purposes of copyright protection to allow media companies to steal personal images and benefit from the fair use defense by simply inserting the photo in an article which only recites factual information - much of which can be gleaned from the photograph itself." 2018 WL 6510801 at *8.

While the briefing of Plaintiff's summary judgment motion was pending, Hearst filed a frivolous motion for sanctions based on alleged oral representations made during the course of a settlement conference held five months prior on October 23, 2017 [Dkt. #59] In spite of defense counsel's signed certification that Hearst would comply with Your Honor's Standing Order prior to participation in the conference, it intentionally violated the Order by mischaracterizing off-the-record statements allegedly made by Plaintiff's counsel which could "not be used for any purpose." [Standing Court Order, ¶ 1] In response, Plaintiff appropriately filed a cross-motion for judgment of civil contempt.

The Court should not tolerate such flagrant violation of an unambiguous Standing Court Order which was designed to preserve the sanctity of this District's settlement conference program. Accordingly, the Court should enter a judgment of civil contempt against Hearst and award Plaintiff his attorneys' fees in connection with Hearst's improper and untimely motion practice.

Liebowitz  Law Firm, PLLC

Thank you for your consideration of this matter.

Respectfully Submitted,

/richardliebowitz/
Richard Liebowitz

Counsel for Plaintiff Jonathan Otto